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In The

SUPREME COURT of the UNITED STATES

October Term, 1970

No. ~~1549~~ 70-112

JAMES E. GROPPI,

Petitioner,

v.

JACK LESLIE, Sheriff of Dane County,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner JAMES E. GROPPI prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on January 6, 1971.

Citation to Opinion Below

The opinion of the United States Court of Appeals on re-hearing *en banc* is reported at 435 F. 2d 331 (1971); and printed in the Appendix, infra, pp. 1a-10a. The opinion of the United States Court of Appeals is reported at 435 F. 2d 326 (1970), and printed in the Appendix, infra, pp. 11a-19a. The opinion of the United States District Court,

Western District of Wisconsin, is reported at 311 F. Supp. 772 (1970), and printed in the Appendix, infra, pp. 21a-40a.

Jurisdiction

The judgment of the United States Court of Appeals for the Seventh Circuit after re-hearing *en banc* was entered on January 6, 1971. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. Sec. 1254(1).

Constitutional Provisions Involved

Article IV, Sec. 8, Wisconsin Constitution

Rules; contempts; expulsion

Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and with concurrence of two-thirds of all members elected, expel a member, but no member shall be expelled a second time for the same cause. (Wis. Stats., 1967, p. 35).

Statutes Involved

Sec. 13.26 Wisconsin Statutes

Contempt

(1) Each house may punish as a contempt, by imprisonment, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses:

* * *

(b) Disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings.

* * *

(2) The term of imprisonment a house may impose under this section shall not extend beyond the same session of the legislature. (Chp. 13, Wis. Stats., 1967, p. 202).

Sec. 13.27 Wisconsin Statutes

Punishment for Contempt

(1) Whenever either house of the legislature orders the imprisonment of any person for contempt under s. 13.26 such person shall be committed to the Dane county jail, and the jailer shall receive such person and detain him in close confinement for the term specified in the order of imprisonment, unless he is sooner discharged by the order of such house or by due course of law.

(2) Any person who is adjudged guilty of any contempt of the legislature or either house thereof shall be deemed guilty also of a misdemeanor, and after the adjournment of such legislature, may be prosecuted therefor in Dane county, and may be fined not more than $200 or imprisoned not more than one year in the county jail.

Questions Presented

1. Whether a legislative body can, consistent with due process of law, two days after alleged contemptuous conduct, *ex parte* imprison a person under its contempt power without giving the person any notice of the charge against him or any opportunity whatsoever to appear before the legislative body and respond to the charge.

2. Whether consistent with due process of law a person can be found in contempt of a legislative body when the legislative contempt resolution sets forth mere conclusions and fails to set forth any underlying facts or circumstances which constituted the alleged contemptuous behavior.

Statement of the Case

On October 1, 1969, the Assembly, one of two houses of the State of Wisconsin Legislature, passed the following resolution:

> Citing James E. Groppi for contempt of the Assembly and directing his commitment to the Dane County Jail.
>
> In that James E. Groppi led a gathering of people on September 29, 1969, which by its presence on the floor of the Assembly during a meeting of the 1969 Regular Session of the Wisconsin Legislature in violation of Assembly Rule 10, prevented the Assembly from conducting public business and performing its constitutional duty; now therefore be it
>
> Resolved by the Assembly, That the Assembly finds that the above cited action by James E. Groppi constituted "disorderly conduct in the immediate view of the House and directly tending to interrupt its proceedings" and is an offense punishable as a contempt under Section 13.26(1) (b) of the Wisconsin Statutes and Article 4, Section 8 of the Wisconsin Constitution and therefore:
>
> (1) Finds James E. Groppi guilty of contempt of the Assembly; and
>
> (2) In accordance with Section 13.26 and 13.27 of the Wisconsin Statutes orders the imprisonment of James E. Groppi for a period of six months or for the duration of the 1969 Regular Session, whichever is briefer in the Dane County Jail and directs the Sheriff of Dane County to seize said person and deliver him to the jailer of the Dane County Jail; and be it further
>
> Resolved, That the Assembly directs a copy of this resolution to be transmitted to Dane County District Attorney for further action by him under Sec-

tion 13.27(2) of the Wisconsin Statutes; and be it further

Resolved, That the Attorney General is respectfully requested to represent the Assembly in any litigation arising herefrom.

Subsequently a copy of the Resolution was served on Groppi and he was imprisoned in the Dane County Jail. Groppi was never served with a copy of the Resolution prior to his imprisonment and was afforded no specification of the charge against him, no notice and no hearing. The Circuit Court for Dane County dismissed Groppi's application for a Writ of Habeas Corpus as did the Wisconsin Supreme Court. *State ex rel. Groppi v. Leslie*, 44 Wis. 2d 282, 171 N. W. 2d 192 (1969).

After the Dane County Circuit Court denied Groppi's petition a Petition for Writ of Habeas Corpus was filed in the United States District Court for the Western District of Wisconsin pursuant to Sec. 1254, T. 28, U. S. C. Groppi was admitted to bail by the District Court after the Wisconsin Supreme Court denied his petition. At that time he had served ten days of the sentence imposed by the Assembly under the Resolution.

On April 8, 1970, the District Court held the Assembly could not summarily impose a jail sentence for legislative contempt without first providing Groppi with some "minimal opportunity" to appear and to respond to the charge. Accordingly the Court granted the Writ of Habeas Corpus and ordered that Groppi be released from any further custody or restraint pursuant to the Resolution. *Groppi v. Leslie*, 311 F. Supp. 772 (W. D. Wis. 1970).

On October 28, 1970, the United States Court of Appeals for the Seventh Circuit reversed the judgment of the District Court and directed that an order be entered denying Groppi's petition for habeas corpus and granting the Respondent Sheriff's motion to dimiss. *Groppi v. Leslie,* 435 F. 2d 326 (1970). Subsequently, the Court of Appeals granted Groppi's petition for a rehearing *en banc* and in a four to three decision affirmed the Court's decision of October 28, 1970. *Groppi v. Leslie,* 435 F. 2d 331 (1971).

Reasons for Granting the Writ

The petition raises substantial and important questions concerning the extent and nature of the power of summary contempt and the procedural rights guaranteed to a person charged with legislative contempt. This Court has not passed on these issues and this case remains unprecedented historically and legally. There are no reported instances where a legislative body imprisoned an individual without giving him an opportunity to respond as charged. The decision of the Court of Appeals has for the first time in the history of jurisprudence held that a legislature may imprison an individual for six months without giving him a right to appear and respond to the charges against him. Further, the Court of Appeals has denied to Groppi the procedural safeguards which would have been available to him if he had been charged with judicial contempt. The issues involved herein are similar to those raised in *Mayberry v. Pennsylvania,* decided by this Court on January 20, 1971, 8 Cr. L. Rptr. 3065, where this Court held a judge should not sit in judgment of an individual

who he has cited for contempt except where necessary to immediately vindicate the court's authority.

I.

Our system of Government is premised on the assumption that the individual must be protected against the exercise of absolute power by the Government. It is contrary to our system to allow a person to be imprisoned without giving him an opportunity to respond to the charges against him.

Before any governmental body may act to injure an individual he is entitled to a minimal opportunity to be heard. This principle has been stated in many areas involving the interrelationship between the Government and the citizen. *Goldberg v. Kelly,* 397 U. S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970) (termination of welfare benefits); *Sherbert v. Verner,* 374 U. S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963) (disqualification for unemployment compensation); *Slochower v. Board of Higher Education,* 350 U. S. 551, 76 S. Ct. 637, 100 L. Ed. 692 (1956) (discharge from public employment); *Dixon v. Alabama State Board of Education,* 294 F. 2d 150 (C. A. 5, 1961) (suspension from public school); *Hahn v. Burke,* 430 F. 2d 100 (C. A. 7, 1970) (revocation of probation); *McCarley v. Sanders,* 309 F. Supp. 8 (M. D. Ala. 1970) (expulsion of a member of a Legislature).

In *Brown v. United States,* 359 U. S. 41, 79 S. Ct. 539, 3 L. Ed. 2d 609 (1959) and *Levine v. United States,* 362 U. S. 610, 80 S. Ct. 1038, 4 L. Ed. 2d 989 (1960), this Court upheld summary contempt convictions but stressed the fact the trial court in each case had allowed the defendants to

be heard prior to imposing sentence. 359 U. S. at 52, 362 U. S. at 613-14. Also see *Panico v. United States,* 375 U. S. 29, 84 S. Ct. 19, 11 L. Ed. 2d 1 (1963). In addition the right of allocution has long been recognized in cases of judicial summary contempt. See *In Re Maury,* 205 Fed. 626 (C. A. 9, 1913).

II.

In a case involving summary contempt under the provisions of Rule 42(a) of the Federal Rules of Criminal Procedure, Judge Friendly dissenting in part stated that "summary" means "only that certain usual procedural requirements may be dispensed with not that basic rights can be sacrificed." *United States v. Galante,* 298 F. 2d 72, at p. 78 (C. A. 2, 1962). The majority opinion in *Galante* while not approving the lack of an opportunity to respond to contempt charges found no reversible error since there had been no request to be heard and no indication the trial court would have denied the defendant therein that right.

The procedures followed by the Wisconsin Assembly under the terms of its contempt resolution violated the ancient maxim that "no man shall be punished before he has had an opportunity of being heard". *The King v. Benn and Church,* 6 T. R. 198 (1795) (Lord Kenyon, Chief Judge). Without any prior notice to petitioner and without giving him or his counsel any opportunity to be present or to be heard the Wisconsin Assembly cited him for contempt, found him guilty of an offense which had al-

legedly been committed two days earlier and sentenced him to imprisonment.[1]

While it has long been held that legislative bodies have contempt powers, *Jurney v. MacCracken*, 294 U. S. 125, 55 S. Ct. 375, 79 L. Ed. 802 (1935), there is no other reported instance in which a legislative body exercised its contempt power without according the person charged the minimal requirements of due process, that is, notice of the charge against him and an opportunity to answer the charge. In the exercise of its contempt power Congress has always met the minimal due process standards of notice and an opportunity to defend. See: Goldfarb, *The Contempt Power*, 163 (1963). Consistent with this tradition, the District Court herein envisioned a hearing before the Assembly in which the petitioner would have been required to show cause why he should not be punished for his conduct. 311 F. Supp. at 780. Appendix p. 35a. No protracted trial, which would have brought the legislative process in Wisconsin to a halt was contemplated by the District Court or requested by the petitioner herein.

III.

Further, there is no summary contempt power where the charge is not made immediately upon the commission of the alleged contempt. The principal justification for the existence of the summary contempt power by the judiciary is the need for an immediate vindication of the court's authority. See the dissenting opinion of Justice Frankfurter

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[1]It is intersting to note that petitioner was also charged with disorderly conduct in violation of the Laws of the State of Wisconsin for his alleged conduct in the incident mentioned in the Legislative Contempt Resolution. A jury trial was held in the County Court for Dane County, Wisconsin, on that charge and the petitioner was discharged after the jury was unable to reach a verdict.

in *Sacher v. United States,* 343 U. S. 1, 22 S. Ct. 451, 96 L. Ed. 717 (1952). Similarly, where the contempt power is not necessary for the immediate vindication of the court's authority, due process requires that the subsequent contempt proceedings be held before a judge other than the one citing the contemnor for his conduct. *Mayberry v. Pennsylvania,* United States Supreme Court, January 20, 1971, 8 Cr. L. Rptr. 3065. Also see *In Re Oliver,* 333 U. S. 257, 68 S. Ct. 499, 92 L. Ed. 682 (1948).

The failure of the Wisconsin Assembly to act for two days in citing Groppi from the time of the alleged contemptuous conduct indicates there was no need for the exercise of summary contempt powers, denying him any opportunity to respond to the charge.

IV.

Not only was petitioner denied notice of the charge against him and an opportunity to respond thereto, the Assembly's Contempt Resolution merely cited a legal conclusion without any statement of the underlying facts supporting that conclusion. As a result petitioner was placed in an extremely difficult, if not impossible position, in requesting judicial review of the contempt order. Rule 42(a) of the Federal Rules of Criminal Procedure makes explicit the fundamental rule that a judicial summary contempt order must recite sufficient facts which lead to the finding and sentence of contempt. A rule implicit in this Court's decision in *Ex parte Terry,* 128 U. S. 289, 305, 9 S. Ct. 77, 32 L. Ed. 405 (1888). The contempt power has been described as "perhaps nearest akin to despotic power of any power existing under our form of Government". *State ex rel. Attorney General v. Circuit Court,* 97 Wis. 1, at p. 8

(1897). As a result procedural safeguards must be strictly adhered to so as to keep this drastic power within the permissible limits of fairness and reason. A strict adherence to procedural regularity has been a potent factor in the development of our liberties. In view of the fact that the Wisconsin Assembly did not see fit to adopt the contempt resolution until two days after the alleged contumacious conduct and at a time when it appeared that the legislative body had returned to its normal processes there is not reason to excuse it from being required to follow the valued procedural safeguards which are essential to our liberty.

CONCLUSION

For the reason stated herein and since certain basic rights inherent in a society of free men can never be sacrificed the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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In the
United States Court of Appeals
For the Seventh Circuit

SEPTEMBER TERM, 1970 SEPTEMBER SESSION, 1970

No. 18538
JAMES E. GROPPI,
Petitioner-Appellee,
vs.
JACK LESLIE, Sheriff of Dane County,
Respondent-Appellant.

Appeal from the United States District Court for the Western District of Wisconsin.

January 6, 1971

Before SWYGERT, *Chief Judge,* HASTINGS, *Senior Circuit Judge,* KILEY, CUMMINGS, KERNER, PELL and STEVENS, *Circuit Judges.*[1]

PELL, *Circuit Judge.* This matter being before the court *en banc* following reargument pursuant to the granting of Groppi's petition for rehearing, we are not persuaded that the result, and reasoning in support thereof, reached by the panel originally hearing this appeal, as set forth in the court's decision of October 28, 1970, is other than correct.

The basic and simple issue remains whether the judicial power of summary punishment[2] for direct contempt is constitutionally exercisable by the legislative branch. We hold that it is for the reasons advanced in the original

[1] Thomas E. Fairchild, Circuit Judge, has disqualified himself, noting that he was a member of the three-judge court which decided *Groppi v. Froehlich,* 311 F. Supp. 765 (W.D. Wis. 1970), a closely related case arising out of the same events as *Groppi v. Leslie,* 311 F. Supp. 772 (W.D. Wis. 1970), and heard at the same time.

[2] See *Ex parte Terry,* 128 U.S. 289 (1888).

opinion of this court, which opinion we now adopt and confirm. *Groppi* v. *Leslie,* ..... F. 2d ..... (7th Cir. October 28, 1970).

While the resolution adopted by the Wisconsin Assembly might well have spelled out the alleged misconduct of Groppi with greater particularity, it nevertheless is couched in terms of ultimate fact which we do not find lacking in adequate specificity. There is no indication to us that the contemnor failed to be fully and explicitly informed of the charge leveled against him and the exact nature of his misconduct.

Our decision is reached on the narrow issue before us, involving direct interference with "conducting public business" in "the immediate view of the legislative body." We do not purport to reach any decision on the matter of contemptuous behavior occurring outside the legislative chamber itself.

Other means for punishing contempts are available to the legislature and resort to such other procedures may be found sufficiently efficacious in the future. We here hold, however, that the basic public need for inviolability of the legislative processes of our government dictates the availability of the power of summary contempt punishment to the legislative branch. The Wisconsin legislature has seen fit in the circumstances of the case before it to exercise that power and we do not deem it in the public interest to interfere.

It is to be noted that Groppi's term of imprisonment under the resolution does not extend beyond the end of the legislative term, i.e., January 7, 1971. Both petitioner's and respondent's counsel have argued that the issue here involved is not mooted by this fact. This is our opinion also. *See United States ex rel. Lawrence* v. *Woods,* 432 F. 2d 1073, 1074-75 (7th Cir. 1970).

REVERSED.

STEVENS, *Circuit Judge,* with whom SWYGERT, *Chief Judge,* and KILEY, *Circuit Judge,* join, dissenting.

At no time in this proceeding has petitioner asserted any claim of innocence, or any claim that his sentence was excessive. It may be assumed, as the Wisconsin Supreme Court plainly stated, that any such claim would have been promptly and fairly heard in some form of post conviction trial.[1] As the disposition of an isolated controversy, therefore, no one could criticize this court's judgment as unfair or unreasonable.

The case, however, must be decided in the context of our legal traditions. It raises only a procedural issue, but in my judgment that issue is of fundamental importance and requires that petitioner's conviction be set aside. *Cf. Rex* v. *Justices of Bodmin* [1947] 1 K.B. 321.

The Fourteenth Amendment to the United States Constitution limits the procedures which a state may employ prior to the imprisonment of any person. The applicable clause states: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law." One of the oldest and most consistently accepted maxims in our legal tradition is the proposition that "no man shall be punished before he has had an opportunity of being heard." *The King* v. *Benn and Church,* 6 T.R. 198 (1795) (Lord Kenyon, Ch.J.); see *United States* v. *Galante,* 298 F.2d 72, 77 (2d Cir. 1962) (Friendly, J., dissenting).

The procedure which Wisconsin employed to deprive the petitioner of his liberty violated that ancient maxim. On October 1, 1969, without any prior notice to petitioner, and without giving him or his counsel an opportunity to be present or to be heard, the Wisconsin Assembly cited him for contempt, found him guilty of an offense which had been committed two days earlier, and sentenced him to imprisonment.[2] Although I recognize that the due process

[1] See *State ex rel. Groppi* v. *Leslie,* 44 Wis. 2d 282, 297 (1969).

[2] That legislative finding not only deprived petitioner of his liberty; it also had a material impact on his procedural rights. Even assuming the availability of a post conviction remedy in which petitioner could have presented evidence or argument denying the rather vague charge in the resolution, the legislative finding eliminated his presumption of innocence and shifted the burden of proof. It would have been necessary for him to go forward with the task of proving a negative before he

clause tolerates flexible procedures in varying situations,[3] in my opinion the label "legislative contempt" does not exclude this *ex parte* conviction from the coverage of the Fourteenth Amendment.

Disorderly conduct on the floor of a legislative body is a well recognized species of legislative contempt.[4] Historically acts of violence,[5] like other legislative contempts such as attempted bribery,[6] refusal to answer questions or pro-

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[3] (Continued)
heard the evidence against him. As a practical matter the value of his privilege against self-incrimination and of his right to be confronted with the witnesses against him would have been debased, if not destroyed entirely.

[3] "Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, 'due process' cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, 'due process' is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess." *Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 162-163 (Frankfurter, J. concurring).

[4] The Supreme Court decision which first upheld the power of Congress to punish contempts treated disorderly conduct in the presence of a legislative body as an established species of legislative contempt. *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204, 217, 228; see *Marshall* v. *Gordon*, 243 U.S. 521, 543-544; Shull, Legislative Contempt — An Auxiliary Power of Congress, 8 Temp. L.Q. 198, 202-203 (1934).

[5] In 1865, A. P. Field was reprimanded by the Speaker of the House and discharged from custody after a trial before a committee of the house at which he was found guilty of assaulting and wounding a member with a knife. Cong. Globe, 38th Cong., 2nd Sess. 991 (1865). In 1832, Sam Houston was arrested and tried before the House of Representatives for assaulting a member of the House, 8 Debates, 22nd Cong., 1st Sess. 2512-2620, 2810-3022. Perhaps the most famous instance of violence directed against a member of Congress occurred in 1856. Brooks, a member of the House of Representatives from South Carolina, who was offended by a speech, attacked Senator Charles Sumner in the Senate Chambers after adjournment, and beat him with a cane inflicting serious injuries. The Senate determined that the matter properly should be punished by the House, and a hearing was conducted by a Committee of the House which afforded Brooks the opportunity to appear and contest the evidence against him. H.R. Rep. No. 182, 34th Cong., 1st Sess. (1856).

[6] *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204, apparently involved an attempt to bribe a member of the House. See 19 U.S. at 215; *Kilbourn* v. *Thompson*, 103 U.S. 168, 196. The contemnor was brought before the bar of the House and permitted to present a defense, 19 U.S. at 209-210. In 1795 Robert Randall was tried by the House on a charge of attempting to bribe a member and found guilty of contempt, 5 Annals, 4th Cong., 1st Sess. 166-195, 232, 200-229, 237, 243.

duce documents before a legislative committee,[7] and the destruction of subpoenaed documents,[8] have been prosecuted by the Legislature itself. In such cases the accused has been brought before the bar of the House and given an opportunity to speak in his own defense before any punishment was imposed. As this type of proceeding was no doubt somewhat cumbersome, and since the duration of any imprisonment was limited to the remainder of the legislative session, Congress long ago provided for the prosecution of contempts in judicial proceedings.[9] Apparently Congress never considered the possibility of avoiding the inconvenience of a prolonged legislative hearing by simply eliminating the accused's traditional opportunity to be heard in his own defense.[10]

Prior to October 1, 1969, no American legislature had found it necessary to employ *ex parte* procedures to punish disorderly or other contemptuous conduct. The fact that the exercise of summary contempt powers has been accepted as a necessary and appropriate aspect of our judicial processes does not support an argument that the Wisconsin Legislature needs or possesses like powers. Indeed, a comparison of the legislative and judicial experience with contempts leads to a contrary conclusion.

It is the business of judges to decide particular cases, to make determinations of guilt or innocence, to listen to arguments in mitigation, and to impose appropriate punishments. Although occasional abuses have required correction on review, by and large the judicial contempt power has proved useful in advancing the orderly disposition of

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[7] *McGrain* v. *Daugherty*, 273 U.S. 135 (refusal to appear; apparently Daugherty was discharged from custody by a Federal District Court in Ohio before he could be brought before the bar of the Senate, 273 U.S. at 154); *Kilbourn* v. *Thompson*, 103 U.S. 168 (refusal to answer a question and produce documents; Kilbourn was brought before the bar of the House and allowed to present a defense, 103 U.S. at 174).

[8] *Jurney* v. *MacCracken*, 294 U.S. 125 (destruction and removal of subpoenaed documents; MacCracken declined to appear before the bar of the Senate for trial, 294 U.S. at 143, 152).

[9] 2 U.S.C. § 192 makes the refusal to testify before a committee of Congress a misdemeanor. The original provision, 11 Stat. 155, was enacted in 1857. See *Jurney* v. *MacCracken*, 294 U.S. 125, 151; see also *In re Chapman*, 166 U.S. 661. In recent years Congress has relied upon the statutory procedure. See Goldfarb, The Contempt Power (1963), 43.

[10] Wisconsin's concern that a protracted hearing in this case might have required the legislative process to grind to a halt could, of course, have been eliminated by following the example of Congress.

litigation.[11] The conclusion that judges can safely be trusted with such powers is supported by analysis of the judicial function and by years of experience. The multitude of judicial contempt cases which have been decided in our history apparently include none in which a judge, two days after the offense, without giving the contemnor notice or any opportunity to be heard, entered an *ex parte* order sentencing him to prison.[12]

But that is the nature of the procedure employed by the Wisconsin Assembly in this case. This departure from tradition should itself point to the danger of entrusting summary contempt powers to bodies not accustomed to their exercise. The contempt power has been described as "perhaps nearest akin to despotic power of any power existing under our form of government." *State ex rel. Attorney General* v. *Circuit Court*, 97 Wis. 1, 8 (1897), and its exercise has been narrowly limited.[13] Without reflecting adversely on the importance and dignity of the legislative function, it must be recognized that legislators are more responsive to the temporary moods of the body politic.

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[11] "I would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees, but when there is no need for immediate action contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts." *Toledo Newspaper Co.* v. *United States*, 247 U.S. 402, 425-426 (Holmes, J. dissenting).

[12] The closest case I have found is *Ex parte Terry*, 128 U.S. 289, in which the contemnor, after being forcibly removed from the courtroom, was forthwith committed for contempt. In that case, however, the Court expressly reserved decision on the question whether a circuit court would have had the power on "a subsequent day" to proceed to order the arrest and imprisonment of the contemnor "without first causing him to be brought into its presence, or without making reasonable efforts by rule or attachment to bring him into court, and giving him an opportunity to be heard before being fined and imprisoned, . . ." 128 U.S. at 314. In cases in which contempts during the course of a trial are not punished until the end of the proceeding, the contemnor is, of course, continuously present in court and normally given repeated opportunities to be heard in defense or mitigation before the imposition of sentence.

[13] In *Anderson* v. *Dunn*, 19 (6 Wheat.) 204, 230, the Supreme Court stated that the legislative contempt power rests upon the principle of self-preservation and is limited to "the least possible power adequate to the end proposed." *Cf.*, *Kielley* v. *Carson*, 13 Eng.Rep. 225, 234-235 (P.C. 1842).

than are judges.[14] Therefore, history's recognition of a frequent need for summary punishment of judicial contempts does not establish a need for co-extensive legislative contempt powers.

It is argued that there was no risk of error or abuse in this case because petitioner's disorderly conduct occurred "in the immediate view of" the Wisconsin Assembly. It is contended that no purpose could have been served by hearing from petitioner or his counsel because the Assembly already knew all the facts. This may or may not be true. It is entirely possible that conduct which certain legislators found particularly offensive was committed by other members of the "gathering of people" led by petitioner;[15] it is possible that some legislators were particularly offended by insulting speech (perhaps even speech on other occasions)[16] rather than conduct; and that certain conduct was viewed by some legislators but not by others. Even if each member of the Assembly who voted in favor of the resolution had perfect knowledge of the facts, a valid purpose would have been served by hearing from petitioner before voting on the resolution. It is presumed that argument may persuade judges even when they know the facts.[17] I would give legislators the benefit of the same presumption.[18]

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[14] In the Seventeenth Century a judge who insulted the privileges of the House by questioning its contempt powers was himself subject to contempt proceedings, in which his political unpopularity apparently affected the members' deliberations. See colloquy between the Attorney General and Lord Ellenborough, C.J. in *Burdett* v. *Abbott*, 104 Eng. Rep. 501, 540-543 (1811).

[15] The opinion of the Wisconsin Supreme Court states that the Legislature could not perform its public duties without "imprisonment of the intruders," 44 Wis.2d at 291, yet the Assembly resolution related only to petitioner.

[16] Legislative attempts to punish disrespectful speech as contempts have occurred in the past but have not met with judicial approval. See *Marshall* v. *Gordon*, 243 U.S. 521, 545-546.

[17] In judicial proceedings in which there is no genuine dispute as to a material fact, and when only property rights are affected, the court may not enter a summary judgment without proper notice and argument. See Fed.R.Civ.P.56.

[18] When the Assembly voted on the resolution, presumably the need for emergency action had passed. At that time, since the Wisconsin courts disapprove of punishment by the Legislature for past misconduct, an argument questioning the propriety of a legislative sentence of six months would not have been frivolous. 44 Wis.2d at 296.

It is suggested that even if summary legislative contempt powers have been unnecessary historically, the modern day "politics of confrontation" have created a new necessity that requires abandonment of traditional procedures. I question the validity of the argument, even if limited in application to plenary sessions of state legislative bodies, for prompt police action is probably an adequate means of terminating disorder and enabling the legislative body to resume its work. If the argument of necessity were valid, it would prove too much. Confrontations occur in legislative committee hearings, union meetings, stockholders meetings, public parks, college campuses, and the streets. Violent, disorderly conduct in all these settings should be firmly and promptly punished. I am not convinced that the effective administration of justice will be enhanced by using *ex parte* procedures to deal with any of these situations, or by providing an unusual protective procedure available only to legislative assemblies.

If punishment is to serve as an effective deterrent to repeated or widespread disorder, it is important that the community at large have confidence in the fairness of the proceedings which lead to conviction and sentencing.

> "At the foundation of our civil liberty lies the principle which denies to government officials an exceptional position before the law and which subjects them to the same rules of conduct that are commands to the citizen. And in the development of our liberty insistence upon procedural regularity has been a large factor. Respect for law will not be advanced by resort in its enforcement to means which shock the common man's sense of decency and fair play." *Burdeau* v. *McDowell,* 256 U.S. 465, 477 (1921) (Brandeis J. dissenting).

In my opinion the preservation of order in our communities will be best ensured by adherence to established and respected procedures. Resort to procedural expediency may facilitate an occasional conviction, but it may also make martyrs of common criminals.

I respectfully dissent.

KILEY, *Circuit Judge,* dissenting.

I join in Judge Stevens' dissent for the reasons he gives.

I dissent for the further reason that the Assembly Resolution does not state facts sufficient to support its conclusion that Groppi was guilty of disorderly conduct punishable as contempt. The effect upon Groppi of this fatal deficiency was denial of fundamental fairness because he is not informed of what he did in the "immediate view" of the Assembly which amounted to disorderly conduct.

Groppi's habeas petition does not expressly cast the deficiency in the Resolution as a denial of due process as we have done. His petition alleges denial of his "right to be informed of the nature and cause of the accusation against him."[1] In this court Groppi argues persuasively the anomaly of a summary or direct contempt order reciting only a legal conclusion without a statement of the underlying facts supporting the conclusion. And he argues that "it is not clear" how a court can adequately review a contempt order unless the facts are stated.[2]

It is a fundamental rule that a judicial summary contempt order must carry, in itself, a statement of the acts or words constituting the contempt. This rule is implicit in *Ex parte Terry,* 128 U.S. 289, 305 (1888); and is stated in *Tauber* v. *Gordon,* 350 F.2d 843 (3rd Cir. 1965); *Parmelee Transportation Co.* v. *Keeshin,* 294 F.2d 310 (7th Cir. 1961); and *Hallinan* v. *United States,* 182 F.2d 880 (9th Cir. 1950). In *Great Lakes Screw Corp.* v. *NLRB,* 409 F.2d 375 (7th Cir. 1969), where an NLRB hearing examiner excluded defendant's counsel from the hearing for "contumacious conduct," this court held that the exclusion violated defendant's due process rights, saying "[n]o compelling reason exists for not extending the requirement of adequate disclosure of the basis for contemptuous conduct findings to the quasi-judiciary as well as the judiciary." *Id.* at 379. Respondent-appellant's brief

[1] Groppi made similar allegations in his petition for habeas corpus in the state proceedings.

[2] The Wisconsin Supreme Court took judicial notice of facts not in the record. These "facts" are contained in footnote 2 in the majority opinion here.

concedes that legislative exercise of its summary contempt power parallels judicial exercise of that power, and I see no reason why the legislature should not be similarly required to state facts constituting the contempt.

Here the contempt resolution states that "Groppi led a gathering of people . . . which by its presence on the floor of the Assembly during a meeting . . . prevented the Assembly from conducting public business and performing its constitutional duty" and that the "above-cited action" constituted "disorderly conduct in the immediate view" of the Assembly, an offense under Sec. 13.26(1) (b) Wis. Stat. and Art. IV. Sec. 8 of the Wisconsin Constitution. According to the Resolution, anyone—however innocently —who leads a "gathering of people" on the Assembly floor is ipso facto guilty of contempt. There is no statement, for example, of what activities Groppi or the "gathering" engaged in, how they obtained admission to the floor of the Assembly, or how the Assembly was prevented from performing its constitutional functions. All of this is left to the speculation of the reviewing court.

A complaint for disorderly conduct drawn in words similar to the Resolution before us would not support a conviction. *People* v. *Mulvey,* 135 N.Y.S. 2d 17, 206 Misc. 771 (1954); *People* v. *Lee,* 334 Ill. App. 158, 78 N.E.2d 822 (1948); *State* v. *Hettrick,* 126 N.C. 977, 35 S.E. 125 (1900). An indictment, where the subject law is general, must descend to particulars. *Russell* v. *United States,* 369 U.S. 749, 765 (1962); *United States* v. *Cruikshank,* 92 U.S. 542, 548 (1875). *See also United States* v. *Carll,* 105 U.S. 611, 612 (1882). *A fortiori,* where a person is punished by imprisonment without being informed of what he did that was unlawful, he is denied fundamental fairness. No meaningful review would be available to him. *See Great Lakes Screw Corp.* v. *NLRB,* 409 F.2d 375 (7th Cir. 1969).

Because Groppi has not been informed in the Assembly Resolution what acts or words of his constituted disorderly conduct so as to be contemptuous, I would [redacted] affirm

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

USCA 3829—The Scheffer Press, Inc., Chicago, Illinois—1-6-71—200

In the
United States Court of Appeals
For the Seventh Circuit

SEPTEMBER TERM, 1970 SEPTEMBER SESSION, 1970

No. 18538
JAMES E. GROPPI,
Petitioner-Appellee,
v.
JACK LESLIE, Sheriff of Dane County,
Respondent-Appellant.

Appeal from the United States District Court for the Western District of Wisconsin.

OCTOBER 28, 1970

Before HASTINGS, *Senior Circuit Judge,* CUMMINGS and PELL, *Circuit Judges.*

PELL, *Circuit Judge.* On October 1, 1969, the Assembly, one of two houses of the Wisconsin state legislature, adopted the following resolution:

> "Citing James E. Groppi for contempt of the Assembly and directing his commitment to the Dane county jail.
>
> "In that James E. Groppi led a gathering of people on September 29, 1969, which by its presence on the floor of the Assembly during a meeting of the 1969 regular session of the Wisconsin Legislature in violation of Assembly Rule 10 prevented the Assembly from conducting public business and performing its constitutional duty; now, therefore, be it

"Resolved by the Assembly, That the Assembly finds that the above-cited action by James E. Groppi constituted 'disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings' and is an offense punishable as a contempt under Section 13.26(1)(b) of the Wisconsin Statutes and Article IV, Section 8 of the Wisconsin Constitution and therefore:

"(1) Finds James E. Groppi guilty of contempt of the Assembly; and

"(2) In accordance with Sections 13.26 and 13.27 of the Wisconsin Statutes, orders the imprisonment of James E. Groppi for a period of 6 months, or for the duration of the 1969 regular session, whichever is briefer, in the Dane county jail and directs the sheriff of Dane county to seize said person and deliver him to the jailer of the Dane county jail; and, be it further

"Resolved, That the Assembly directs that a copy of this resolution be transmitted to the Dane county district attorney for further action by him under Section 13.27(2) of the Wisconsin Statutes; and, be it further

"Resolved, That the attorney general is respectfully requested to represent the Assembly in any litigation arising herefrom."

Subsequent to the adoption of the Assembly resolution, a copy was served upon Groppi and he was imprisoned in the Dane County Jail upon the authority of said resolution. Prior to being served with a copy of the resolution, Groppi was given no specification of the charge against him, had no notice of any kind, nor was any hearing of any kind held. An application for a writ of habeas corpus was dismissed by the Circuit Court for Dane County and thereafter the Wisconsin Supreme Court also denied an application for a writ of habeas corpus and denied a motion for rehearing. *State ex rel. Groppi* v. *Leslie,* 44 Wis. 2d 282, 171 N.W. 2d 192 (1969).

On the same day that the Dane County Circuit Court denied Groppi's petition, a petition for a writ of habeas

corpus was filed in the United States District Court for the Western District of Wisconsin. Groppi was admitted to bail by the district court on the day the Wisconsin Supreme Court denied his petition but after he had served ten days of the sentence imposed by the Wisconsin Assembly. On April 8, 1970 the district court held that the legislature could not summarily impose jail sentence for contempt of the legislature without providing the accused with some minimal opportunity to appear and to respond to the charge. The court accordingly granted the writ of habeas corpus, dismissed the respondent Leslie's motion to dismiss, vacated the order releasing Groppi on bail and ordered that he be released from any further custody or restraint pursuant to the resolution of the Assembly. *Groppi* v. *Leslie,* 311 F. Supp. 772 (W.D. Wis. 1970).

Simultaneously a three-judge district court held constitutional that portion of the Wisconsin Statutes providing for further prosecution after the adjournment of the legislature, being §13.27(2), Wis. Stat. *Groppi* v. *Froehlich,* 311 F. Supp. 765 (W.D. Wis. 1970).

An exposition of the development of our law on the power of not only courts but legislatures to punish for contempt is to be found in both the decision of the Wisconsin Supreme Court and of the single-judge district court[1] and no worthwhile purpose will be served by burdening this opinion with a repetition thereof. Suffice it to say that the law as it presently exists is that the legislature as well as the court has the power to punish for contempt and further that where all of the essential elements of the misconduct are under the eye of the court and are actually observed by the court, the judge has the power to impose punishment summarily. The sole issue now before us on this appeal is as stated in the brief filed on behalf of Groppi: "Should the summary power of contempt to imprison a person without a notice or hearing be extended to a legislature."

The district court concluded "that such punishment may not be imposed by a legislature without at least

[1] *State ex rel. Groppi* v. *Leslie,* 44 Wis. 2d 282, 171 N.W. 2d 192 (1969); and *Groppi* v. *Leslie,* 311 F. Supp. 772 (W.D. Wis. 1970).

providing the accused with some minimal opportunity to appear and to respond to a charge." (311 F. Supp. at p. 777). We disagree.

Groppi contends that there is no historical precedent for the exercise of summary contempt power by the legislature. Insofar as reported court decisions are concerned the contention appears to be correct. Conversely, we have found no reported decisions holding that the legislature does not have summary contempt power. The fact of this apparent lack of authority either way suggests that instances of leading a gathering of people on to the floor of legislative halls and preventing the legislature from conducting public business are extremely rare if not virtually non-existent to this time in the United States.

Groppi further contends that our legislatures have apparently not needed summary contempt powers as they have functioned to date without that power. This assertion rather begs the question as it is not possible to tell whether they have functioned without the power if the need has not heretofore arisen for the use of the power. Whether the legislature does have the power is the issue before us. Whether legislatures in the future will have the need for summary contempt power may well be a *sequela* of the ultimate decision in the case before us.

We cannot be unmindful of recent relatively unprecedented illegal disruptions of the proceedings in courts in our country and this appeal, presenting, as it appears to do, a case of first impression, assumes in our judgment critically significant proportions as to the ability of deliberative legislative bodies to carry on their governmental functions.

While it might be difficult to equate with any degree of equanimity orderly governmental procedures with the effect of the conduct of Groppi as stated in the opinion of the Wisconsin Supreme Court,[2] and while the taking of

[2] "On September 29, 1969, during a regular meeting of the Assembly just prior to the commencement of a special session called by the governor, James E. Groppi led a crowd of noisy protesters into the state capitol building and proceeded to 'take over' the Assembly chamber to protest his disagreement with cuts in the state budget for certain welfare programs. The Assembly was unable to proceed with its legis-

the law into one's own hands, no matter how worthy the cause might be, is arguably an insecure basis from which to complain of swift and summary punishment, nevertheless, putting aside these considerations we determine the question here involved as a legal issue in a constitutional context. For the purposes of this appeal we are considering only the bare allegations of the Assembly resolution that Groppi led a gathering of people on the floor of the Assembly during a session thereof and prevented the Assembly from conducting a public business. It is on this factual basis we hold that the legislature may properly punish summarily for contempt.

It must also be borne in mind that we have here involved not mere words of incitation but rather deeds and acts of actual physical force.

The court below was of the opinion that the minimal requirements of procedural due process could be provided by the legislature with little delay, presumably referring to a legislative hearing. However, the invasion here involved is not of a committee or subcommitte of the legislature but of the legislative hall itself. Again, we cannot be unmindful of the protracted nature of court proceedings which involve a *cause célèbre*. The courts, notwithstanding occasional difficulties, are essentially designed to devote the necessary time. The legislature is not. Counsel for Groppi conceded during the argument on this appeal that conceivably a full legislative hearing could cause the work of the body to grind to a halt for several weeks. We find such a contemplation intolerable on the American scene.

We agree with that part of the decision of the district court (311 F. Supp. at 780) which disagreed with the

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[2] (Continued)

lative duties. We take judicial notice that Groppi publicly stated in the Assembly to his cheering supporters, in effect, that they had captured the capitol and intended to stay until they got what they wanted, and that Groppi vowed from the speaker's stand in the Assembly to remain there until the legislature restored funds for welfare recipients. The occupation of the Assembly by Groppi and the protesters lasted from approximately midday to well toward midnight." *State ex rel. Groppi v. Leslie*, 44 Wis. 2d 282, , 171 N.W. 2d 192, 194 (1969).

declination of the Supreme Court of Wisconsin[3] to draw an analogy between courts and legislatures with respect to the power to punish direct contempt. If the only purpose of the summary contempt power was to remove from the legislative halls persons obstructing legislative activity, this no doubt could be ordinarily expeditiously accomplished by summoning the necessary police. The district court recognized that legislatures do impose sanctions for the purpose of punishing for a past deed, as well as for the purpose of preventing further interference with the legislative function. This is, in our opinion, as it should be. While we recognize that there is some disagreement as to the extent to which punishment is a crime deterrent, we are yet to be convinced that freedom from immediate and summary punishment would be any deterrent to proscribed activities.

In the opinion from which this appeal is taken, the district court adverted (at p. 777) to the possibility of a destruction of the parallel of the legislative situation to the court's summary powers because of the question whether "all of the essential elements of the misconduct" occurred "under the eye of" the members who voted affirmatively October 1 and were "actually observed by those members." In view of the fact that regularly constituted legislative sessions are frequently marked by substantially less than a full attendance on the "floor" by all members of the body, it may be arguable whether the strict standards enunciated in *In re Oliver*, 333 U.S. 257, 274-75 (1948),[4] need be scrupulously observed or whether it may not be adequate that proceedings were disrupted for those who were in the chamber at the time, that no further proceedings could be had during the continuance of the invasion and that the resolution of punishment be adopted by at least a majority of the body as a whole irrespective of whether each individual member there personally observed the misconduct. We do not

[3] 44 Wis. 2d at 296, 171 N.W. 2d at 198.

[4] "[F]or a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court's immediate presence, but * * * the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct."

need to determine this issue. The question of fact of whether the petitioner's acts on September 29 were observed by a specific member who voted affirmatively two days later was not timely presented to the state courts of Wisconsin and it would therefore appear that there had not been an exhaustion of remedies available in the courts of this state. 28 U.S.C. §2254. Further, there is no allegation which would serve to create an issue of fact included in the petition filed in the district court. The issue appears to have been created by the district court's opinion. We do not on this appeal deem it necessary to indulge in a presumption of non-regularity of the Assembly proceedings. *United States v. Chemical Foundation,* 272 U.S. 1, 14-15 (1926); *Barry* v. *United States ex rel. Cunningham,* 279 U.S. 597, 619 (1929).

The district court in its opinion, while expressing some skepticism (at p. 778) as to the viability, or at least desirability, of the doctrine of summary contempt power insofar as the courts are concerned, nevertheless, accepting the court situation as established law, found a basis for differentiating the factual situation presented on the one hand in the courtroom and on the other hand in the legislative chambers. Thus the court felt that the physical contours of most legislative chambers, the comings and goings of the members and the diffusion of attention of the members among other factors would render it improbable that all the members present would share a uniform perception and evaluation of the incident as would the single judge. The court's conclusion was that the room for error inherent in the response of a large group was so great as to require that it observe some minimal procedures before it invoked its contempt power. However, the matter is not before us on the factual basis of perceptivity of witnesses. It is before us on the basis that James E. Groppi led a gathering of people onto the floor of the Assembly and prevented the Assembly from conducting its business. The Wisconsin Supreme Court made it clear in its decision that factual matters such as erroneous perceptivity would be subject to review in the courts of that state. (171 N.W. 2d at p. 198). The court pointed out that Groppi had not sought a hearing in the Wisconsin Supreme Court or any court

on the merits of the contempt issue, and that he had not offered any defense nor denied that his acts amounted to a contempt, although the court had allowed him to amend his complaint to present any matter he wished.

As a matter of fact, there is a complete absence in the record before us in the proceedings in the federal district court and in this court on appeal of any denial by Groppi of the contemptuous acts with which he was charged. The sole contention of Groppi is simply that he should not have been summarily punished for the charged contemptuous acts.

To the extent that Groppi appears to be urging a jury trial pursuant to *Bloom* v. *Illinois,* 391 U.S. 194 (1968), we do not find *Bloom* applicable here as the punishment provided for in the resolution could not in any event have exceeded six months. *Cheff* v. *Schnackenberg,* 384 U.S. 373 (1966), *Dunkin* v. *Louisiana,* 391 U.S. 145, 162 n. 35 (1968).

Insofar as Groppi contends that the procedure whereby he was imprisoned constitutes a bill of attainder or a bill of pains and penalties, we agree with the district court on the invalidity of this contention and adopt and approve that portion of the district court's opinion.

The district court in its opinion also expresses the thought that unlike many courts of record, frequently, if not typically, no verbatim written record of legislative proceedings exists. Acts of violent disruption, such as those which have occurred recently in the state courts of California, would seem scarcely to lend themselves to a reporter's transcript any better than would the acts charged against Groppi in the resolution of the Wisconsin Assembly. In any event, a question of what happened factually and whether it is to be determined from a court reporter's transcript or from the mouths of eye witnesses is one which is not determinative of the issue before us. The proof of what happened in the legislative halls will be the same whether the legislature has to have a hearing prior to punishment or whether the hearing is in a court for a review of a claim of lack of factual basis for the punishment.

We share the laudable concern of the district court for the full protection of procedural rights guaranteed to the individual by the due process clause of the Fourteenth Amendment. In essence, however, we have in the case before us a situation in which we must balance claimed constitutional procedural rights of the individual citizen against the welfare of the citizenry as a whole. We find the scales weighted in favor of the citizenry. In so doing we do not feel we are adopting an alarmist view in recognizing validity in the respondent's position that protracted and frequent legislative trials, if necessary, could easily and realistically become a favorite tool in the politics of confrontation and obstruction, and representative government (whatever its present faults) would go down to defeat.

We reach with some reluctance any decision which appears even remotely to achieve an eroding effect on basic civil liberties as guaranteed by our constitution; but believing, as we do, that illegal and physically forcible interference with properly functioning governmental institutions would pose the real risk of being eventually accompanied by the abolition, rather than the erosion of the individual constitutional liberties, we are unable to reach any other result in the case before us.

For the reasons hereinbefore indicated, the judgment of the district court is reversed, the petition for habeas corpus is hereby denied and respondent-appellant's motion to dismiss is hereby granted.

REVERSED.

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Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

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APPENDIX

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

OCTOBER TERM, 1970, APRIL 8, 1970

No. 69-C-241

JAMES E. GROPPI,

Petitioner,

v.

JACK LESLIE, Sheriff of
Dane County,

Respondent.

OPINION AND ORDER

This is a petition for habeas corpus in which it is alleged that petitioner is in custody in violation of the Constitution of the United States. 28 U. S. C. § 2241(c) (3). A response has been filed. Petitioner has been admitted to bail pending a decision on his petition.

Findings

Upon the basis of the entire record, I find:

On October 1, 1969, the Assembly, one of two houses of the Wisconsin state legislature, passed the following resolution (entitled "1969 Spec. Sess. Assembly Resolution"):

> Citing James E. Groppi for contempt of the Assembly and directing his commitment to the Dane county jail.
>
> In that James E. Groppi led a gathering of people on September 29, 1969, which by its presence on the floor of the Assembly during a meeting of the 1969 regular session of the Wisconsin Legislature in violation of Assembly Rule 10 prevented the Assembly from conducting public business and performing its constitutional duty; now, therefore, be it
>
> Resolved by the Assembly, That the Assembly finds that the above-cited action by James E. Groppi constituted "disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings" and is an offense punishable as a contempt under Section 13.26(1) (b) of the Wisconsin Statutes and Article IV, Section 8 of the Wisconsin Constitution and therefore:
>
> (1) Finds James E. Groppi guilty of contempt of the Assembly; and
>
> (2) In accordance with Section 13.26 and 13.27 of the Wisconsin Statutes, orders the imprisonment of James E. Groppi for a period of 6 months, or for the duration of the 1969 regular session, whichever is briefer, in the Dane county jail and directs the sheriff of Dane county to seize said person and deliver him to the jailer of the Dane county jail; and, be it further

Resolved, That the Assembly directs that a copy of this resolution be transmitted to the Dane county district attorney for further action by him under Section 13.27(2) of the Wisconsin Statutes; and, be it further

Resolved, That the attorney general is respectfully requested to represent the Assembly in any litigation arising herefrom.

A copy of the Assembly resolution was subsequently served upon petitioner and he was imprisoned in the Dane County jail upon the authority of the said resolution. Prior to being served with a copy of the resolution and imprisoned, petitioner was afforded no specification of the charge against him, no notice of any kind, and no hearing of any kind. Thereafter, petitioner unsuccessfully sought to obtain his release by commencing various actions and proceedings in the state courts and in this court. The Circuit Court for Dane County dismissed petitioner's application for a writ of habeas corpus. The Wisconsin Supreme Court thereafter denied petitioner's application for a writ of habeas corpus, and denied a motion for rehearing. *State ex rel. Groppi v. Leslie*, 44 Wis. 2d 282 (1969).

Wisconsin Constitution and Statutes

Article IV, Section 8, Wisconsin Constitution, provides, in part:

"Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior. . . ."

Section 13.26, Wisconsin Statutes, provides, in part:

"(1) Each house may punish as a contempt, by imprisonment, a breach of its privileges or the privileges of its members . . . for . . . :

". . .

"(b) Disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings. . . .

"(2) The term of imprisonment a house may impose under this section shall not extend beyond the same session of the legislature."

Section 13.27, Wisconsin Statutes, provides:

"(1) Whenever either house of the legislature orders the imprisonment of any person for contempt under s. 13.26 such person shall be committed to the Dane county jail, and the jailer shall receive such person and detain him in close confinement for the term specified in the order of imprisonment, unless he is sooner discharged by the order of such house or by due course of law.

"(2) Any person who is adjudged guilty of any contempt of the legislature or either house thereof shall be deemed guilty also of a misdemeanor, and after the adjournment of such legislature, may be prosecuted therefor in Dane county, and may be fined not more than $200 or imprisoned not more than one year in the county jail."

Contentions of Parties

The petition for habeas corpus asserts that respondent sheriff's custody of petitioner pursuant to the Assembly resolution is unlawful because:

> "petitioner has been denied the right to be represented by counsel, the right to a trial or hearing of any kind, the right to compulsory process for the attendance of witnesses, the right to be informed of the nature and cause of the accusation against him, the right to confront his accusers and the right to present his defense to the alleged charges."

The petitioner further asserts that the Assembly action constitutes "a bill of attainder and/or pains and punishments"; that the Assembly resolution is invalid because the Assembly was not legally in either regular or special session either on the date of the alleged offense or on the date the resolution was passed; and that the remedies available to petitioner in the state courts are ineffective and inadequate to protect petitioner's rights.[1]

The respondent denies that petitioner's detention violates the Constitution of the United States, and moves to dismiss because the petition fails to state a claim upon which relief can be granted. No evidentiary hearing has been held. A hearing on issues of law has been held in this habeas corpus proceeding in conjunction with a hearing in a related three-judge case, *Groppi v. Froehlich*, 69-C-235.

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[1]Subsequent to the filing of the petition for habeas corpus in this proceeding in this court, the Supreme Court of Wisconsin denied a petition for habeas corpus. It is conceded that petitioner has now exhausted his state remedies with respect to those issues raised by his petition in the Wisconsin Supreme Court and those issues acted upon by that Court. 28 U. S. C. § 2254.

Procedural Due Process

In *Ex parte Terry*, 128 U. S. 289, 313 (1888), this broad statement of the courts' contempt power appears:

> We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never supposed to be in conflict with the liberty of the citizen, that for direct contempts committed in the face of the court, at least one of superior jurisdiction, the offender may, in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that, according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them.

This power in the courts has been reaffirmed frequently. *United States v. Barnett*, 376 U. S. 681, at 698 (1964); *In re Murchison*, 349 U. S. 133, 134 (1955); *Sacher v. United States*, 343 U. S. 1, at 8 (1952); *Fisher v. Pace*, 336 U. S. 155 (1949); *Cooke v. United States*, 267 U. S. 517, 534-535 (1925); *Ex parte Hudgings*, 249 U. S. 378, 383 (1919); *Ex parte Savin*, 131 U. S. 267, 277 (1889). See Rule 42(a), Federal Rules of Crim. Proc.; 18 U. S. C. §§ 401, 402.

Commenting upon *Ex parte Terry* 60 years later, the Court emphasized that it had "recognized that such departure from the accepted standards of due process was

capable of grave abuses, and for that reason gave no encouragement to its expansion beyond the suppression and punishment of court-disrupting misconduct which alone justified its exercise." *In re Oliver*, 333 U. S. 257, 274 (1948). The Court continued (333 U. S. 274-276):

> That the holding in the *Terry* case is not to be considered as an unlimited abandonment of the basic due process procedural safeguards, even in contempt cases, was spelled out with emphatic language in *Cooke v. United States*, 267 U. S. 517, a contempt case arising in a federal district court. There it was pointed out that for a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court's immediate presence, but that the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct. This Court said that knowledge acquired from the testimony of others, or even from the confession of the accused, would not justify conviction without a trial in which there was an opportunity for defense. Furthermore, the Court explained the *Terry* rule as reaching only such conduct as created "an open threat to the orderly procedure of the court and such a flagrant defiance of the person and presence of the judge before the public" that, if "not instantly suppressed and punished, demoralization of the court's authority will follow." *Id.* at 536.
>
> Except for a narrowly limited category of contempts, due process of law as explained in the *Cooke* case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other wit-

nesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent "demoralization of the court's authority" before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the *Cooke* case, that the accused be accorded notice and a fair hearing as above set out.

In *Holt v. Virginia,* 381 U. S. 131 (1965); *Offutt v. United States,* 348 U. S. 11 (1954), and *Cooke v. United States,* 267 U. S. 517 (1925), the Court has demonstrated how narrowly circumscribed is the area in which summary power may be exercised by a court.[2]

I turn to the subject of contempt of a legislative body. That agreeably to the Constitution of the United States a legislative house (hereinafter "legislature") may impose a jail sentence for contempt of the legislature is long established and has been reaffirmed in modern times. *Jurney c. MacCracken,* 294 U. S. 125 (1935).[3] However, in *Anderson v. Dunn,* 19 U. S. (6 Wheat.) 204, 208 (1821); *Kilbourn*

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[2]Oklahoma has required, by its Constitution, Art. 2, § 25, that an opportunity to be heard must always precede imposition of a penalty or punishment for contempt. This requirement applies even to contemptuous conduct in the immediate view of the judge. *Sullivan v. State,* 419 P. 2d 559 (Okla. Ct. of Crim. App. 1966); *Young v. State,* 275 P. 2d 358 (Okla. Ct. of Crim. App. 1954).

[3]I consider hereinafter this petitioner's contention that the Assembly resolution under which he is confined is a bill of attainder or a bill of pains and penalties.

v. Thompson, 103 U. S. 168, 173 (1880); *Marshall v. Gordon,* 243 U. S. 521, 532 (1917); *McGrain v. Daugherty,* 273 U. S. 135, 153 (1927), and *Jurney v. MacCracken, supra,* at 144, before being cited for contempt, the accused had been brought before the House or Senate to answer the charge or to purge himself. I am aware of no decision of the Supreme Court of the United States or of the Court of Appeals for this circuit in a case in which the contumacious behavior was said to have been disorderly conduct in the immediate view of the legislature and directly tending to interrupt its proceedings, nor any in which the legislature undertook to impose punishment summarily. I consider the question raised here to be an open question.

The petitioner has neither denied nor admitted in this court that he engaged in the conduct described in the Assembly resolution: namely, that he led a gathering of people which by its presence on the floor of the Assembly prevented the Assembly from conducting public business and performing its constitutional duty.[4] The Supreme Court of Wisconsin has concluded, implicitly if not explicitly, that such conduct violates Sec. 13.26, Wis. Stat., which prohibits "disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings";

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[4]Whether the Assembly was in regular session or special session on the date of the alleged offense or on the date the contempt resolution was passed is a matter of state law. In a habeas corpus proceeding here, petitioner may challenge the lawfulness of his custody only on the ground that it is "in violation of the Constitution or laws or treaties of the United States." 28 U. S. C. § 2241(c) (3). *United States ex rel. Greer v. Pate,* 393 F. 2d 44 (7th cir. 1968), cert. den. 393 U. S. 890 (1968).

this construction of the state statute is binding on me.[5] I conclude that if such conduct had occurred in a courtroom in the presence of a judge, "where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court" (*In re Oliver*, 333 U. S. at 275), the judge would have been empowered to impose a jail sentence summarily. The precise question is whether such conduct in a legislative chamber may be punished summarily by a legislature by confinement in jail.[6] I conclude that such punishment may not be imposed by a legislature without at least providing the accused with some minimal opportunity to appear and to respond to a charge.

The Assembly resolution passed October 1 recites that petitioner engaged in certain acts September 29. The question arises whether "all of the essential elements of the misconduct" occurred "under the eye of" the members who voted affirmatively October 1, and were "actually observed" by those members. If not, the parallel to the court's sum-

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[5]In its opinion, the Supreme Court of Wisconsin, apparently by an exercise of judicial notice, referred to numerous events and circumstances which were said to have occurred in and around the State Capitol September 29 and thereafter. No evidentiary hearing had been held by that Court, or at its direction, and none has been held in this court. So far as the events of September 29 in the Assembly chamber are concerned, the only version of the facts is that contained in the Assembly Resolution of October 1. Obviously, the incident and its aftermath were abundantly reported by the news media. It may appear precious for a court to refrain from accepting accounts of such an incident which are generally accepted by the public. For some purposes, it may be practical for a court to accept them. For example, it should not be necessary for a court to receive evidence that extensive rioting had occurred in a community prior to the particular events involved in a case. But the central issue in this case is whether, in circumstances such as these, a specific person who is said by the press, radio, or television to have engaged in certain specific a 's may be imprisoned without those minimal procedures necessary to insure against mistaken impressions.

[6]Clearly, so far as the Constitution of the United States is concerned, the legislature, or members or officers or agents thereof, are free to remove from the house one engaging in such conduct and for a reasonable time to bar him from reentering. The issue here relates to imposing a term in jail.

mary powers is destroyed. It is a question of fact whether the petitioner's acts on September 29 were observed by a specific member who voted affirmatively two days later. How this issue of fact is to be resolved presents a problem. The text of the October 1 resolution is silent on the point, and the record in this court sheds no light on it.[7] To impose the burden of proof upon the petitioner would be unreasonable; it would probably require him to take a discovery deposition of each member of the house (or at least of a number of those voting affirmatively October 1 which number would constitute a majority of those present and voting). When there is involved a power so extreme that its use by a court has been limited with intense care, the validity of its use by a legislature may not be made to depend upon a presumption of fact concerning whether the September 29 acts were observed by the October 1 voters.

However, even if the Assembly record itself or evidence presented in a court later, were to establish that there were present in the Assembly chamber September 29 a sufficient number of those members voting affirmatively October 1, I would conclude that the due process clause of the Fourteenth Amendment would forbid these members to impose a jail term upon the accused without first providing him with a reasonable opportunity to respond to a stated charge.

In my view, it is an anachronism that a judge should be permitted today to impose a jail term upon a contemnor with first providing him with a reasonable opportunity to

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[7]Compare Rule 42(a), Federal Rules of Criminal Procedure: "A criminal contempt may be punished summarily if a judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court."

respond to a stated charge. The doctrine with respect to courts is of ancient origin. Even in its persent restricted and battered state, it is an unseemly aberration in a mosaic of procedural rights guaranteed by the due process clauses of Fifth and Fourteenth Amendments in many less compelling situations. But the doctrine does enjoy some slender roots in practical common experience. That is, when by the exercise of his own senses, the judge is a witness to the totality of the incident—the time at which it occurred, the place at which it occurred, the immediate history of the situation in which it occurred—it is not wholly unreasonable to conclude that the room for error in his perception and evaluation of the incident is slight and that intermediate procedures may be dispensed with. Practical common experience affords no such support for a similar conclusion with respect to the room for error in perception and evaluation by a large group of human beings, whether judges, legislators, or others. The physical contours of most legislative chambers, the comings and goings of the members, and the diffusion of attention of the members, among many factors, render it improbable that all of the members present would share a uniform perception and evaluation of an incident, upon the basis of which each member might then decide upon an appropriate response. This would be true even at a moment when the legislature is actively in session, discussing the business before it, and more true at times at which it is commencing or terminating its work. The question is not whether these attributes of a legislature altogether prevent it from imposing a jail sentence upon a contemnor. The question is whether these attributes so distinguish a legislature from a court that the legislature must be pre-

vented from visiting such punishment upon a contemnor with such swiftness and abruptness. I conclude that the room for error inherent in the response of a large group is so great as to require that it observe some minimal procedures before it invokes this power.[8]

There are other reasons which lead me to this conclusion.

Unlike many courts of record, frequently if not typically no verbatim written record of legislative proceedings exists. If the availability of judicial review of the contempt citation is assumed, it would nevertheless be severely crippled by the absence of a definitive record of the incident.

Moreover, the nature of available judicial review is extremely unclear. In its opinion in the present case, the Supreme Court of Wisconsin stated (44 Wis. 2d at 297):

> We do not hold the action of the legislature is not reviewable in our courts and subject to correction. It is expressly provided in sec. 13.27, Stats., the contemnor may be discharged before his time by "the due course of law." The petitioner has not sought a hearing in this court or any court on the merits of the contempt issue. He has not offered any defense or denied his acts amounted to a contempt although this court in this proceeding allowed him to amend his complaint to present any matter he wished. The only issues presented dealt primarily with procedure, not with the issue of his innocence or with the merits of any defense. We think due process is satisfied when the courts are open to determine promptly any ques-

[8]Perhaps similar considerations may affect the summary powers of courts consisting of more than one judge. However this may be, there remains a significant contrast between a court consisting of nine members, and the Wisconsin Assembly consisting of one hundred.

> tion concerning the merits of a contempt found to have been committed by summary process before a legislature for contempt committed in its presence.

And the court stated further (at 299):

> The only practical way a contempt in the presence of the legislature can be handled is by summary process reviewable by the judiciary. We think it is neither a necessary nor an acceptable construction of the constitution that a trial or a hearing be engrafted upon the legislative contempt power when the judiciary will immediately review the action of the legislature and has the power to grant adequate and appropriate relief.

Although this statement is somewhat surprising in the light of the limitations upon the historic function of the writ of habeas corpus,[9] I am bound to accept it as an authoritative statement that one who has been imprisoned by the legislature for contempt of the legislature may obtain from a Wisconsin court a review of the "merits" of the legislative action. However, the nature and extent of this review is not explained. It is not clear whether the accused is entitled to a trial de novo on the underlying factual issues relating to his conduct, or whether the review is comparable to judicial review of an administrative deci-

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[9]In *In re Falvey and Kilbourn*, 7 Wis. *630 (1858), in a habeas corpus proceeding to test the lawfulness of a confinement imposed by the Assembly, the Court stated (at *639) that it had no appellate power over the Assembly when the Assembly had acted within its jurisdiction, and that the Court could not "suspend [the Assembly's] judgment because it has made a mistake or abused its discretion in the premises." In *State ex rel. Reynolds v. County Court*, 11 Wis. (2d) 560, 573 (1960), it was emphasized that in Wisconsin, even with respect to contempt of court, habeas corpus is "restricted to the question of the jurisdiction of the committing court" and that errors "in the exercise of jurisdiction" are not reviewable. See 39 Am. Jur. 2d, Habeas Corpus, § 28, pp. 198-201.

sion, or whether the burden of persuasion rests with the accused petitioner or with the respondent. If there is indeed to be a review of the "merits", it appears that a trial of the facts would be necessary, since no trial has as yet occurred, and since there is no written record of the underlying events to which a court might look. Assuming, however, that these difficult matters could be resolved satisfactorily, the initial injustice would not be reached; the hearing, whatever it may be, would be afforded after the imposition of the punishment and not before.[10]

I do not consider that affording petitioner some minimal opportunity to appear and to respond to a charge would constitute an undue burden on the legislature. The proceeding would probably resemble the contempt proceedings in the United States Congress discussed in *Kilbourn v. Thompson* and *Jurney v. MacCracken, supra,* in which the accused was order to appear before the bar of the House or Senate and to show cause why he should not be punished for contempt.[11]

In its opinion denying habeas corpus to this petitioner, the Supreme Court of Wisconsin expressly declined to draw an analogy between courts and legislatures with respect

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[10]Bail was refused to this petitioner both by the Circuit Court for Dane County and the Supreme Court of Wisconsin. In an appeal from a conviction for contempt of court, sentence may be stayed and bail granted. *Sacher v. United States,* 343 U. S. 1, 12-13 (1952). On the other hand, bail is rarely granted in habeas corpus proceedings. *United States xe rel. Epton v. Nenna,* 281 F. Supp. 388 (S.D.N.Y. 1968).

[11]The report of *In re Falvey and Kilbourn,* 7 Wis. *630 (1858), involving a contempt of the Wisconsin legislature, reveals (at *633-634) that the alleged contemnor was arrested on February 9, "arraigned before the said Assembly" on February 10, that the Assembly "thereupon" declared him to be in contempt, that he prayed to be heard by counsel in answer (which was refused), that he gave an answer in writing ("which the Assembly declared by resolution to be insufficient"), and that on February 11 the Assembly resolved that he was to be confined for ten days.

to the power to punish direct contempt. 44 Wis. 2d at 295. The Court summarized the distinction between the two powers as follows (at 296):

> Under the judicial contempt power, a contemnor is imprisoned, not to prevent him from continuing to interfere with the judicial function of the court in the future but to punish him for having completed a contemptuous act in the presence of the court. This is punishment necessary to maintain the dignity, decorum, and respect for the court. This objective admittedly is also found in punishment for some crimes. In contrast, the legislative power of contempt, restricted as it is to prevent the contemnor from interfering with the functions of the legislature, is more in the nature of what is known as civil contempt. Its function is not to punish for a past deed but to prevent threatened conduct which interferes with the proper function of the legislative body.

Whatever the validity of this view in terms of the sources and early history of the contempt power, or in terms of justifications for its existence, I cannot agree that it accurately describes the uses of the power. On the one hand, courts impose sanctions for contempt for the purpose of preventing further interference with their function, as well as for the purpose of punishing the offender for a completed act. For example, in *Fisher v. Pace,* 336 U. S. 155 (1949), the trial judge interrupted a lawyer who had persisted in making improper argument to the jury, and ordered him to be removed immediately from the courtroom and placed in jail. Indeed, in *Sacher v. United States,* 343 U. S. 1, 10 (1952), in discussing whether a court might summarily punish a lawyer during a trial or await the trial's end, the Court said that "[t]he overriding consideration

is the integrity and efficiency of the trial process. . . ." On the other hand, legislatures impose sanctions for the purpose of punishing for a past deed, as well as for the purpose of preventing further interference with the legislative function. In *In re Falvey and Kilbourn*, 7 Wis. *630, 634 (1858), the Assembly sentenced the contemnor to jail for ten days "as punishment for the contempt . . . in failing to appear before the joint investigating committee." In *Jurney v. MacCracken*, 294 U. S. 125, 147-150 (1935), it was pointedly held that a legislature may impose punishment for contempt solely as punishment, after the legislative obstruction has been removed, or after the removal of the obstruction has become impossible. Moreover, in the present case, the resolution was adopted by the legislature two days after the acts complained of, and without a hearing even for the purpose of determining how long a period of confinement would be necessary to prevent the petitioner from causing further obstruction of the legislative function.

For the reasons stated, I conclude that the petitioner has been denied procedural rights guaranteed him by the due process clause of the Fourteenth Amendment, and that he is entitled to the relief he seeks.

Bill of Attainder

Petitioner contends that the procedure whereby he was imprisoned constitutes a bill of attainder or a bill of pains and penalties. Art. I, § 10, clause 1, of the Constitution provides: "No State shall . . . pass any Bill of Attainder. . . ." A bill of attainder is a legislative act sentencing a person to death for an alleged crime without a judicial trial, while a bill of pains and penalties imposes some mild-

er punishment. Both types are included in the constitutional prohibition on bills of attainder. Black's Law Dictionary 162 (4th ed. 1951).

In view of the conclusion I have reached, that petitioner is entitled to be released because he has been denied procedural due process, it is not strictly necessary to consider his contention with respect to attainder. However, if his contention in this respect were to be upheld, it might be that the legislature would be wholly deprived of power to impose punishment upon a contemnor, with or without due process. To make clear that I intend no such consequence, I add these comments.

There is some similarity between bills of attainder, which constitute punishment by a legislature without judicial safeguards, and legislative contempt judgments, which can also constitute punishment by a legislature without most judicial safeguards. However, the legislative contempt power has a long history, has been upheld numerous times during that history, *Jurney v. MacCracken, supra,* 294 U. S. at 148-150, and has never been limited or denied because it allegedly violates the constitutional prohibition against bills of attainder. The bill of attainder defense to legislative contempt citations "has not been seriously accepted by the Supreme Court, though Justices Black and Douglas have consistently raised the point in dissent." R. Goldfarb, *The Contempt Power* 223 (1963). See *Barenblatt v. United States,* 360 U. S. 109, 153 *et seq.* (1959) (dissenting opinion).

I conclude that the prohibition on bills of attainder, on the one hand, and the legislative contempt power, on the other, have been permitted by the Supreme Court of

the United States to co-exist for so many years that I am not free now to hold that the survival of the first demands the extinction of the second.

Right To a Jury Trial

The petition here does not assert specifically that custody is unlawful because petitioner was deprived of a jury trial. However, it does allege that he was denied the right to a trial or hearing of any kind; the right to a jury trial was asserted in oral argument; and the Supreme Court of Wisconsin expressly considered whether petitioner had been entitled to a jury trial and decided that he had not. 44 Wis. 2d 298-299. I consider that petitioner has exhausted his state remedy with respect to the jury trial issue, and that he has sufficiently asserted it here. However, I express no opinion with respect to the merits of this contention.

I have concluded that in every case of contempt of the legislature, certain minimal requirements of procedural due process must be observed before the contemnor may be imprisoned. I do not consider these limitations upon the legislature oppressive. First, the minimal requirements of procedural due process can readily be provided with little delay. Second, the ability of the legislature to protect its proceedings from disruption lies primarily in its undoubted power to expel any disrupter immediately, and to employ appropriate police action to prevent further disruption.

ORDER

For the reasons stated above, and on the basis of the entire record herein, the petition for habeas corpus is hereby granted and respondent's motion to dismiss is hereby denied. The order of October 11, 1969, releasing petitioner on bail is vacated, and it is hereby ordered that petitioner be released from any further custody or restraint pursuant to the resolution adopted by the Assembly of the State of Wisconsin on October 1, 1969.

Entered the 8th day of April, 1970.

By the Court:

JAMES E. DOYLE
District Judge

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

OCTOBER TERM, 1970, FEBRUARY 17, 1971

Civil Action File No. 69-C-241 (H-C)

JAMES E. GROPPI,

Petitioner,

v.

JACK LESLIE, Sheriff of
Dane County,

Respondent.

JUDGMENT

This action came on for hearing before the Court, the Honorable JAMES E. DOYLE, United States District Judge, presiding, upon the Mandate of the United States District Court for the Seventh Judicial Circuit, entered on the 11th day of February, 1971, and filed herein on the 17th day of February, 1971; and the Court having entered its Direction to Enter Judgment herein pursuant to said Mandate:

IT IS ORDERED AND ADJUDGED: That the petitioner's petition for a writ of habeas corpus be and it hereby is denied; that respondent's motion to dismiss the petition be and it hereby is granted; that said petition for a

writ of habeas corpus be and it hereby is dismissed; and that costs be taxed in favor of respondent and against petitioner.

Dated at Madison, Wisconsin, this 17th day of February, 1971.

(s) JOHN R. ADAMS
Clerk of Court

A TRUE COPY, Certified this 17th day of February, 1971.

JOHN R. ADAMS, Clerk

By John R. Adams
Clerk